

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:SB:7:SAC:2:GL-169534-01  
MAMartin

date: **FEB 15 2002**

to: Technical Support, Group 1, Area 13  
Attn: Vicki Martinson, Technical Support Advisor

from: Area Counsel  
(Small Business/Self-Employed:Area 7)

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subject: Your Request for Advice  
Agreement and Consent to Creation of Lien under I.R.C. § 6166  
Estate of [REDACTED]  
TIN [REDACTED]

This memorandum responds to your request for assistance dated December 17, 2001, which was received by this office on December 27, 2001. This memorandum should not be cited as precedent.

**ISSUES**

1. Whether an "Agreement for and Consent to Creation of Lien Pursuant to Internal Revenue Code of 1986, Section 6324A," to be used to create a lien on stock in [REDACTED], should be modified by an addendum to read as follows:

[REDACTED]

[REDACTED]

2. Whether, if an addendum is used, the potential disclosure problems can be overcome either by having the other Class B stockholders appoint one of the estate's attorneys as their agent for the notice of default, or by having the co-executors of the estate consent in advance to the release of information to the other Class B stockholders in the event of default.

### CONCLUSIONS

1. We do not agree that the proposed addendum should be used. Instead we propose the addendum set forth in the "Analysis" section below.

2. The potential disclosure problems can be addressed by a separate consent to disclosure, to be referenced in the addendum, as discussed in the "Analysis" section below.

### FACTS

[REDACTED] died on [REDACTED]. The Estate of [REDACTED] (hereinafter "the estate") elected a 10-year deferral of payment under I.R.C. § 6166. The balance due with respect to the estate's estate tax liability is approximately \$[REDACTED]. The estate seeks to pledge shares of stock in the [REDACTED] (hereinafter "the Company") as security.

[REDACTED] and the other shareholders of the Class B stock of the Company had entered into a Stockholders' Agreement dated [REDACTED]. Section [REDACTED] of the [REDACTED] provides as follows:

[REDACTED]

Section [REDACTED] of the [REDACTED] provides, in part, as follows:

[REDACTED]

[REDACTED]

Subsection [REDACTED] of the [REDACTED] provides that the occurrence of any one or more of certain specified "Option Events" shall give rise to options to purchase Shares set forth in subsections [REDACTED], [REDACTED], and [REDACTED] of section [REDACTED].

Subsection [REDACTED] of the [REDACTED] provides that, promptly after the occurrence of an Option Event, the Affected Stockholder shall provide written notice of such occurrence to the Secretary of the Company and to each other Stockholder. Such notice shall set forth [REDACTED] a statement that an Option Event has occurred, [REDACTED] the nature of the Option Event, and [REDACTED] the nature of the Affected Stockholder's interest in any Shares and the number of such Shares. Such notice begins a period of [REDACTED] business days under subsection [REDACTED] of the [REDACTED] in which the other stockholders have an option to purchase the shares. If not all of the shares are purchased pursuant to subsection [REDACTED], subsection [REDACTED] provides for an additional [REDACTED] business days in which the purchasers of stock under subsection [REDACTED] can purchase the remaining shares. Subsection [REDACTED] provides for additional successive periods of [REDACTED] business days during which purchasers of stock in the preceding option periods can purchase shares still remaining.

Subsection [REDACTED] [REDACTED] of the [REDACTED] provides that if not all of the shares are purchased under subsections [REDACTED]

and [REDACTED], the Affected Stockholder shall promptly provide written notice of such fact to the Secretary of the Company, and the Company shall have the exclusive option during the next [REDACTED] business days to purchase the remaining shares.

Counsel for the estate believes that the estate cannot pledge the stock unless the Service agrees to have the relevant provisions of the [REDACTED] apply to it, and he does not want the other stockholders notified of any failure to make a payment unless there is "a real problem." He has therefore suggested the following addendum to the "Agreement for and Consent to Creation of Lien Pursuant to Internal Revenue Code of 1986, Section 6324A":

[REDACTED]

[REDACTED]

#### ANALYSIS

You propose to accept the estate's pledge of stock which is subject to the restrictions set forth in the [REDACTED] [REDACTED]. Apparently, you have determined that the restrictions on the stock (the notice provisions to the other stockholders and the Company, and the right of first refusal of the other stockholders and the Company) do not adversely affect its fair market value. Your memorandum indicates that the probability of default in this case is extremely low, to the point of being nonexistent, and that you are willing to accommodate the concerns of counsel for the estate. Your expressed concerns relate to the wisdom of adding language to the "Agreement for and Consent to Creation of Lien Pursuant to Internal Revenue Code of 1986, Section 6324A," and to the potential disclosure issues.

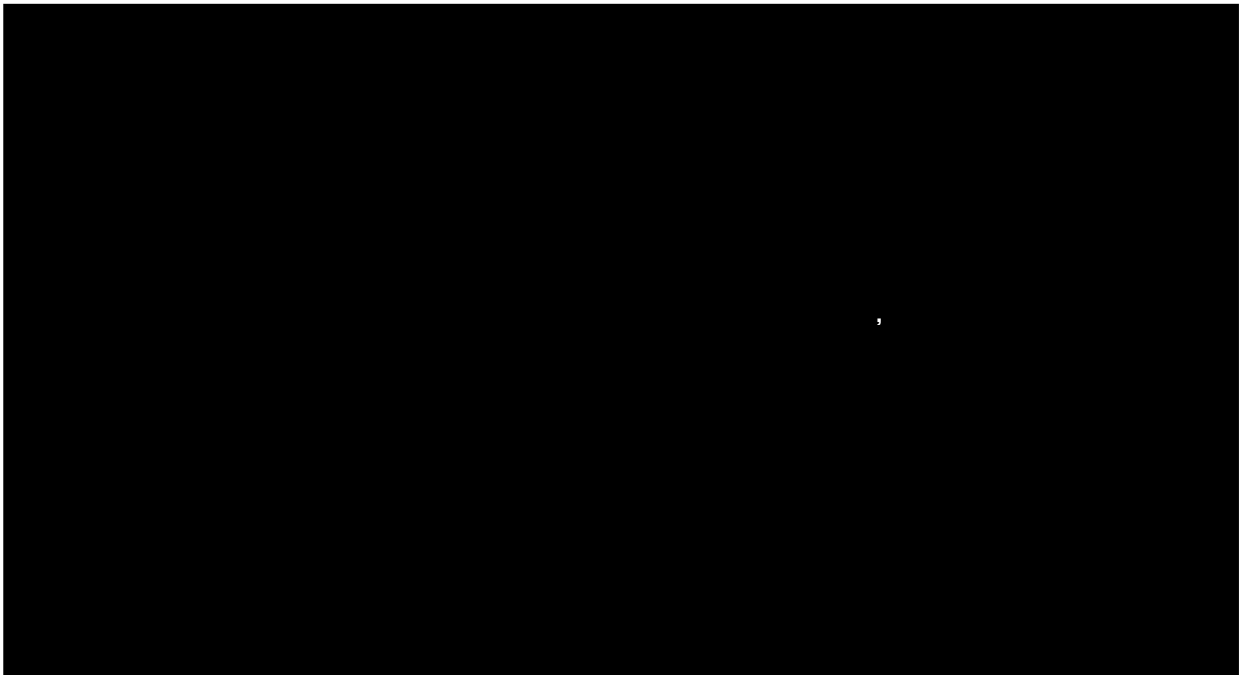
We believe that an addendum is acceptable to the extent that it acknowledges that the stock is restricted by the [REDACTED]

However, we believe that the [REDACTED] paragraph of the proposed addendum is not acceptable. Section [REDACTED] of the [REDACTED] provides that the pledgee shall agree, as a condition to such pledge or other encumbrance, that any default permitting a foreclosure of or an exercise of a power of sale over the Shares so pledged shall be deemed an Option Event giving rise to options to purchase such Shares pursuant to the provisions of Section [REDACTED]. Counsel for the estate wants to define such default to have occurred if the Estate has not satisfied any installment payment obligation to the reasonable satisfaction of the Service within [REDACTED] days of its due date. However, that re-definition of the term "default" would amount to a modification of the [REDACTED], which cannot be accomplished through the "Agreement for and Consent to Creation of Lien Pursuant to Internal Revenue Code of 1986, Section 6324A."

We advise that you limit the addendum to the following statement, which satisfies section [REDACTED] of the [REDACTED] [REDACTED]:

The last sentence to the addendum above, and the estate's execution of the disclosure consent, will allow the Service to provide notice pursuant to the [REDACTED] without violating the disclosure provisions of I.R.C. § 6103. Therefore, please make sure that such consent is executed. The disclosure consent, to be valid, must be a separate written document pertaining solely to disclosure, and it must be signed and dated by the taxpayer who filed the return or to whom the return

information relates. See Treas. Reg. § 301.6103(c)-1T(b)(1). To qualify as a separate written document, the disclosure consent must be on one side of a standard (8-1/2" by 11" or larger) sheet of paper. See Treas. Reg. § 301.6103(e)(1)(i)(A). In this case, the executors of the estate must sign and date the disclosure consent. Also, to be a valid consent, the separate written document must contain the name and taxpayer identity number of the taxpayer whose return information is to be disclosed, the identity of the person or persons to whom the disclosure is to be made, the particular item of return information to be disclosed, and the taxable year or years thereof. See Treas. Reg. § 301.6103(c)-1T(b)(1)(i)-(iv). The disclosure consent should read as follows:



If you have any questions or would like to discuss this matter further, please call Margaret A. Martin at (916) 974-5715.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect

on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

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MARGARET A. MARTIN  
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cc: Area Counsel

cc: Division Counsel